

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: Bruchez et al.	)	Examiner: Jung, Unsu
	)	
Serial No.: 10/735,608	)	Group Art Unit: 1641
	)	
Filed: December 12, 2003	)	Confirmation No.: 1956
	)	
For: <b>METHOD FOR ENHANCING</b>	)	Docket No.: IVGN 620.2 CIP
<b>TRANSPORT OF SEMICONDUCTOR</b>	)	
<b>NANOCRYSTALS ACROSS BIOLOGICAL</b>	)	
<b>MEMBRANES</b>	)	

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**RENEWED PETITION UNDER 37 CFR § 1.181**

**Mail Stop Petitions**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This is in response to the decision on the petition filed on January 29, 2010, requesting withdrawal of the holding of abandonment under 37 CFR § 1.181(a) and is submitted within two (2) months of the decision mailed March 29, 2010. Accordingly, this petition is timely filed.

The Renewed Petition under 37 CFR § 1.181 is being filed together with a Petition For Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137 (b). Applicants respectfully request that the Petition Under 37 CFR 1.137 (b) be considered in the event that the Renewed Petition Under 37 CFR 1.181 is dismissed. Further, a Notice of Appeal is being filed with this paper as a precautionary measure should the Office decide to only grant the Petition For Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137 (b). Accordingly, Applicants submit herewith:

1. Form PTO/SB/64, "Petition For Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137 (b)"; and a
2. Form PTO/SB/31, "Notice of Appeal from the Examiner to the Board of Patent Appeals and Interferences."

Applicants believe that the Renewed Petition Under 37 CFR § 1.181 does not require a fee. If needed, the Commissioner is authorized to charge the fee for Petition For Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137 (b) (\$ 1620), the Notice of Appeal (\$ 540) and any further fees due for the filing or credit any overpayment associated

with this or any other filing to Applicants' **Deposit Account No. 50-3994**.

In the event that additional fees or extensions of time are required, Applicants herein petition for the necessary extension of time under 37 C.F.R. § 1.136(a) and authorize the Commissioner to charge these fees or credit any overpayment associated with this or any other filing to Applicants' deposit account. This is not an authorization to pay the issue fee.

Upon grant of the Renewed Petition Under CFR § 1.181, Applicants respectfully request withdrawal of the Petition For Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137 (b) and a refund of the fees associated with the petition filing, the Notice of Appeal, and any extension of time fees.

Applicants respectfully request consideration of the Renewed Petition in view of the following remarks and enclosures.

**REMARKS**

As an initial matter, Petitioner believes that certain information in the decision may be inaccurate. In particular, the decision states the following:

“On 11 June, 2008, Petitioner’s decedent filed a reply, however, the application already stood abandoned.

For reasons unexplained, on 30 March, 2009, Petitioner’s decedent/Petitioner filed a copy of the 15 August, 2007, Notice of Abandonment.”

Petitioner has inspected the file for the instant application and the Image File Wrapper and Transaction History in PAIR and finds no evidence of the documents referred to in the Decision or any filings on the dates identified in the Decision. Accordingly, Applicants believe the filings noted did not occur in the present application.

The decision states that “Petitioner appears not to comply with the guidance in the Commentary at MPEP §711.03 (c)(I) – as discussed below, Petitioner has failed to satisfy the showing requirements set forth there.”

According to the decision (page 2),

“Petitioner failed to state that the docketing system is sufficiently reliable and failed to evidence that the due date docket is that for the firm – and that any other files wherein replies were due for non-final Office actions were reviewed to ensure that the Office action herein had not been misfiled...

It also appeared that Petitioner may have redacted the statement of the reply(ies) due in the due-date listing, making it impossible to discern whether other files wherein replies were due for non-final Office actions were reviewed to ensure that the Office action herein had not been misfiled.”

Applicants believe that the following statement and evidence satisfies the requirements as specified by the USPTO regarding a grantable petition under 37 CFR § 1.181 (a) and addresses the objections raised in the decision and that the instant Petition be granted.

**Statement to Establish Non-Receipt of Office Action**

The above-identified application became abandoned for failure to timely respond to the Final Office Action due September 10, 2009 absent extension of time. Applicants hereby petition to withdraw the holding of abandonment based on failure to receive the Final Office Action mailed June 10, 2009.

As the agent for Applicants, I have reviewed the file and docket records and hereby state that the Final Office Action, mailed June 10, 2009, in U.S. Patent Application Serial No. 10/735,608 was not received by Applicants. At no time did Applicants intend to abandon the subject application.

Following is evidence to support the fact that the Final Office Action was not received at the correspondence address of record.

Attached hereto as Exhibit A are computer screen shots of the electronic file record for the instant application. The electronic file record shows an entry (Non-Final Office Action Response), dated March 4, 2009, and an entry (Notice of Abandonment Received), dated December 28, 2009. The electronic file record is missing an entry indicating receipt of the Final Office Action on or after June 10, 2009.

The instant application is prosecuted directly by the agent of record at Life Technologies Corporation. The following describes the docketing procedure used by Life Technologies Corporation. CPA Global IPSS is responsible for receiving incoming correspondence from the USPTO, docketing due dates, and filing the documents in an electronic file management system on behalf of Life Technologies Corporation. All USPTO correspondence in the instant application is mailed to Life Technologies c/o CPA Global IPSS (Intellevate).

Following are the procedures used by CPA Global IPSS for processing mail and docketing USPTO due dates.

- i) Incoming correspondence is received and entered into the mail log daily.
- ii) Correspondence is then forwarded to a docketing clerk. The correspondence is reviewed by the docketing clerk, and the due date for filing a response to the correspondence is calculated and docketed.
- iii) The document is then uploaded into the document management system in a new activity that shows the relevant due date as determined by the docketing clerk.
- iv) Once uploaded and docketed, a notification is sent electronically to the agent of record.

Also attached hereto as Exhibit B, as proof of non-receipt of the Final Office Action, is a copy of the Life Technologies Corporation master docket report for September 10, 2009, showing all replies docketed for a date three (3) months from June 10, 2009, the mail date of the non-received Office Action. The docket report shows *all* matters for Life Technologies Corporation having due dates of September 10, 2009. Accordingly, the due date docket record

shown in Exhibit B is "*that for the firm*" and is of "*sufficient reliability*" pursuant to the guidance in the Commentary at MPEP §711.03 (c)(I). The docket report for September 10, 2009, does not show an entry for filing of a Response to Final Office Action in the instant application. Despite the fact that the instant Office Action was never received by Applicants or the agent of record, and in an abundance of caution, Petitioner has reviewed the files for all applications listed on the master docket report for September 10, 2009 and confirms that the instant non-received Office Action was not *misfiled*.

The foregoing provides evidence that the Final Office Action mailed June 10, 2009, was not received by the Applicants and that the Applicants' agent was not notified of receipt of the Final Office Action or made aware of the due date for filing a response to the Office Action. The instant Petition provides the required showing and evidence pursuant to the guidance in the Commentary at MPEP §711.03 (c)(I). Further, the instant Petition addresses each of the objections mentioned on page 2 of the decision. Accordingly, Applicants respectfully request that this application be withdrawn from abandonment and the non-received Office Action re-issued.

In the event that the Office refuses to grant the instant petition, Petitioner respectfully requests that the "Petition For Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137 (b), filed herewith, be considered and granted.

Respectfully submitted,

Date: May 3, 2010

/Karen B. Geahigan/  
Karen Geahigan, Reg. No. 52,936

Enclosures:

- (1) Exhibit A: Electronic file record
- (2) Exhibit B: Docket report for September 10, 2009

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Serial No. 10/735,608

Docket No.: IVGN 620.2 CIP

**EXHIBIT A**  
SCREEN SHOTS OF ELECTRONIC FILE FOR  
U.S. APPLICATION 10/735,608









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Serial No. 10/735,608

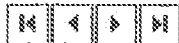
Docket No.: IVGN 620.2 CIP

**EXHIBIT B**

DOCKET REPORT FOR SEPTEMBER 10, 2009

## Report

Name: 000 Daily Due Dates-Date Range  
Categories: LIFE - Docket Reports Daily  
Description: Daily due dates and final due dates for specific date range



Displaying page 1 of 1

16 results returned.

Output Format: HTML

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## Daily Due Dates for Date Range

Jan 5, 2010 4:12:44 PM

Results for  
Date Date Range Sep 10, 2009 thru Sep 10, 2009

FILE NO	APLN	TODAYS DUE DATE
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<u>4495-C2</u> US	12/240,924	9/10/09
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5088-D1 US	12/207,909	9/10/09
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<u>5321 US</u>	11/375,825	9/10/09
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5416 US	11/767,327	9/10/09
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6183 US	11/673,757	9/10/09
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6536 US	10/238,480	9/10/09
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BP-0102- 11/616,080 9/10/09  
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EP DIV (L)

IVGN 837.8 12/491,948 9/10/09  
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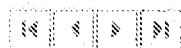
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DIV

LTD0043.12 11/637,813 9/10/09  
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LTD0043.7 11/637,885 9/10/09  
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16 results displayed.



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